

Pounder Declaration

Exhibit F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TWELVE SIXTY LLC, ARON)	
MARDEROSIAN and ROBERT)	
MARDEROSIAN,)	
)	Civil Action No.
Plaintiffs)	1-17-cv-01479
)	
vs.)	
)	
EXTREME MUSIC LIBRARY)	
LIMITED, a division of Sony/)	
ATV Music Publishing;)	
EXTREME MUSIC LIMITED;)	
VIACOM INTERNATIONAL, INC.;)	
NEW CREATIVE MIX INC.; HYPE)	
PRODUCTION MUSIC,)	
)	
Defendants.)	

Videotaped deposition of ROBERT MARDEROSIAN

July 20, 2018

New York, New York

Reported by:

Lisa Forlano

Job no: 22271

Videotaped deposition of ROBERT
MARDEROSIAN, taken by and before Lisa Forlano, CCR,
CRR, RMR, at Pryor Cashman LLP, 7 Times Square, 40th
Floor, New York, New York, on Friday, July 20, 2018,
commencing at 10:10 a.m.

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ALSO PRESENT:
MORRIS RHODES, VIDEOGRAPHER

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 Marderosian, et al. vs. Daymark, Inc.

VIDEO OPERATOR: This is tape number
 one of the videotaped deposition of Robert
 Marderosian, in the matter of TwelveSixty LLC,
 Aron Marderosian, et al., versus Extreme Music
 Library Limited, et al., in the United States
 District Court for the Southern District of
 New York, file number 1-17-cv-01479-PAC. This
 deposition is being held at Pryor Cashman,
 LLP, at 7 Times Square in New York City on
 July 20, 2018 at approximately 10:10 a.m.

My name is Morris Rhodes. I am the
 videographer from TransPerfect Legal
 Solutions. The court reporter is Lisa
 Forlano, also from TransPerfect Legal
 Solutions.

Will counsel please introduce
 themselves.

MR. MARDEROSIAN: My name is Mick
 Marderosian. I'm an attorney. I represent
 the Plaintiffs, and the deponent in this case,
 Robert Marderosian.

MR. ZAKARIN: Don Zakarin, Pryor
 Cashman. With me is Ross Bagley. We
 represent the Extreme defendants.

MR. HWANG: My name is Wook Hwang, with

the law firm of Loeb & Loeb, and with me is my
 colleague, Erin Smith Dennis, and we represent
 Viacom International, Inc. and New Creative
 Mix.

VIDEO OPERATOR: Will the court
 reporter please swear in the witness.

ROBERT MARDEROSIAN, having been duly
 sworn, was examined and testified as follows:

BY MR. ZAKARIN:

Q Good morning, Mr. Marderosian.

A How are you?

Q Good.

A Good.

Q Your name for the record, please.

A Robert J. Marderosian.

Q And your address?

A 24727 Vantage Point Terrace, Malibu,
 California 90265.

Q Okay. Have you previously been deposed
 in any case?

A No.

Q So this is your first deposition --

A Correct.

Q -- although you've attend many of the
 depositions. So you know how they operate?

A Regarding this legal matter, yes.

Q So what I want to do is just give a few
 instructions and then we'll get to the guts of this.
 In terms of the process, I'm going to ask you
 questions, please wait until I'm done and then
 answer to the best of your ability. If you don't
 understand the question, let me know. I don't want
 you answering a question and I'm sure your counsel
 doesn't want you answering a question that I didn't
 ask. So if there's any lack of clarity, let me know
 and I'll rephrase it.

A Understood.

Q All questions are going to be answered,
 unless your counsel instructs you not to answer.
 There will be objections, I am sure. We have seen a
 few. And, again, unless there's an instruction not
 to answer, the question has to be answered.

A Understood.

Q Anytime you want to take a break, let
 me know, and we will immediately take a break.
 Hopefully, there will not be a question pending. If
 there is a question pending, I would prefer to get
 the answer before we take a break.

So is that all clear to you?

A Absolutely.

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1 A No, that is not. That information
2 comes from the broadcaster when they're filling out
3 the cue sheet from the usage.

4 Q So from the perspective of the
5 publisher providing information, it's the author,
6 the publisher, the title and the performing rights
7 society; that's the metadata that you were referring
8 to?

9 A Roughly, yes.

10 Q Okay. I just wanted to understand what
11 that was.

12 In what form, to your knowledge, is
13 that metadata supplied to broadcasters or program
14 users?

15 MR. MARDEROSIAN: You mean in this
16 case, Don, how is it?

17 MR. ZAKARIN: I'm trying to find in
18 general first.

19 BY MR. ZAKARIN:

20 Q In general, do you know?

21 A I'm going to use this case as an
22 example.

23 Q Sure.

24 A We've heard that Extreme, and I believe
25 Mr. Emanuel testified to this, Extreme provides

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1 their third parties with a drive which includes all
2 that data, including audio, and has also, at times,
3 been misreported on their website, Extreme Music,
4 and also the A & E AETN music licensing website.

5 Q So the data is either provided by a
6 drive which contains the information --

7 A Yeah.

8 Q -- correctly or incorrectly, or it's
9 available to be obtained from the website, is that
10 correct, the Extreme website?

11 A Correct. Correctly or incorrectly.

12 Q To the best of your knowledge, is the
13 information sort of track specific. Is the
14 information tied to each individual track that's on
15 the drive?

16 MR. MARDEROSIAN: Track meaning the
17 audio file?

18 MR. ZAKARIN: Yeah, audio file.

19 THE WITNESS: It should be. It should
20 be.

21 BY MR. ZAKARIN:

22 Q And if I understand your testimony,
23 it's your testimony that you believe that the
24 metadata has been changed from time to time at
25 least?

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1 A I do.

2 Q But you have been reported on your BMI
3 statements by for thousands and tens of thousands of
4 uses of your works by various and sundry
5 broadcasters, correct?

6 A Correct.

7 Q And in order for them to report to you,
8 BMI, they have to get the information from
9 broadcasters or program suppliers, correct?

10 A I think this is what comes into
11 question is what was asked yesterday of BMI. BMI is
12 not aware of the audio pertaining to the
13 registration or the metadata, let's call it.

14 Q I understand that. But the metadata
15 for the composition sounds to be exactly the same as
16 the metadata for the audio file --

17 A Right.

18 Q Let me at least get my question out.
19 It seems to be the same, that it's the author, the
20 publisher, the title, the performing rights society,
21 and in addition for cue sheets, it's the program,
22 it's the timing, it's other information as well,
23 right?

24 A Let me clarify it, Mr. Zakarin. When
25 our song "Mulholland Drive," we'll use it as an

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1 example, goes out on a drive, our audio, sound
2 recording, I expected every time to be listed
3 properly as the song title "Mulholland Drive," the
4 author is Aron Marderosian, Robert Marderosian, the
5 performing rights society, BMI. After that, it is
6 up to the music supervisor or the third-party
7 licensee broadcaster, let's call it, to fill out the
8 cue sheet properly with the timing information and
9 the nature of the use on the program that it was
10 used.

11 Q I agree. And my question was going a
12 little bit differently, so let's try to work through
13 it, and then we can take a break in about five
14 minutes. And then I'll try and race through and get
15 rid of some more stuff.

16 A I'm here all night.

17 Q Fine with me as well, but maybe it's
18 not fine with the court reporter, but we'll do our
19 best to work through this.

20 What I was trying to get at is, you've
21 been reported on from broadcasters by BMI for the
22 broadcasters use of your works, or programmers use
23 of your works, on tens of thousands of uses,
24 correct?

25 A Correct.

68 (Pages 266 to 269)

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<p>1 Q In order for you to get reported by</p> <p>2 them, by BMI, and for BMI to get the information for</p> <p>3 those uses the metadata has to be correct, doesn't</p> <p>4 it?</p> <p>5 A You're absolutely correct.</p> <p>6 Q And so at least as to the reported uses</p> <p>7 that you've received and been paid on, you</p> <p>8 understand that the metadata should be correct,</p> <p>9 correct?</p> <p>10 MR. MARDEROSIAN: Each and every time.</p> <p>11 MR. ZAKARIN: Where he's being reported</p> <p>12 to and paid.</p> <p>13 THE WITNESS: I understand what you're</p> <p>14 saying. I wouldn't be expected to be paid for</p> <p>15 anybody else's work, that's correct.</p> <p>16 BY MR. ZAKARIN:</p> <p>17 Q Mistakes happen and you may well be</p> <p>18 paid for other people's works occasionally?</p> <p>19 A Yeah.</p> <p>20 Q And, indeed, I think you may have</p> <p>21 mentioned something about that before.</p> <p>22 A Not really related.</p> <p>23 MR. MARDEROSIAN: Just for the record,</p> <p>24 I'm going to object to the use of the term</p> <p>25 "mistakes." It's argumentative.</p>	<p>1 registrations, various prefixes, multiple titles</p> <p>2 still being registered up to this point, et cetera,</p> <p>3 no tunes detected up to certain uses, payments for</p> <p>4 different titles on your statements, you come to the</p> <p>5 conclusion that someone is monkeying with your</p> <p>6 metadata and your audio.</p> <p>7 Q So it's a conclusion you've reached.</p> <p>8 What is your actual evidence that any metadata has</p> <p>9 been changed?</p> <p>10 MR. MARDEROSIAN: He's already</p> <p>11 explained that to you. I'm going to object to</p> <p>12 the term of "evidence," calling for a legal</p> <p>13 opinion and conclusion; and he's already</p> <p>14 answered the question. But you can answer it</p> <p>15 again.</p> <p>16 THE WITNESS: Thank you. I'm going to</p> <p>17 refer back to Mr. Pounder's declaration. I</p> <p>18 think that was evidence enough that it is</p> <p>19 quite possible, and has happened, that our</p> <p>20 audio was used under someone else's</p> <p>21 methodology.</p> <p>22 BY MR. ZAKARIN:</p> <p>23 Q You're talking about, if I'm</p> <p>24 understanding you correctly, the Range Rover --</p> <p>25 A Land Rover.</p>
Page 271	Page 273
<p>1 BY MR. ZAKARIN:</p> <p>2 Q So at least with respect to the tens of</p> <p>3 thousands of uses that have been reported and paid</p> <p>4 on, those should have been the correct information</p> <p>5 in order for you to get paid?</p> <p>6 A That's right.</p> <p>7 Q So did it occur to you that in order</p> <p>8 for that to happen over eight years, and for your</p> <p>9 view that the metadata gets changed, Extreme or</p> <p>10 Viacom would have to be changing and then changing</p> <p>11 back repeatedly the metadata in order to deprive you</p> <p>12 of some payment when thousands and tens of thousands</p> <p>13 of payments are coming through?</p> <p>14 A Absolutely.</p> <p>15 Q Okay.</p> <p>16 And it's your view that they are</p> <p>17 devoting their time to monkeying with the metadata</p> <p>18 back and forth, back and forth, just to deprive you</p> <p>19 of payment?</p> <p>20 A Now you sound like my grandfather using</p> <p>21 the term "monkeying."</p> <p>22 Q I'm old enough to be your grandfather.</p> <p>23 A Yes, I do. And I'll explain briefly.</p> <p>24 I come to this conclusion, because like we've said,</p> <p>25 when you've got various retitling, various</p>	<p>1 Q I must have been calling for the more</p> <p>2 expensive car.</p> <p>3 A I wish I could afford one.</p> <p>4 MR. MARDEROSIAN: I think that was one</p> <p>5 of the examples.</p> <p>6 THE WITNESS: That's right.</p> <p>7 MR. ZAKARIN: That's fine.</p> <p>8 MR. MARDEROSIAN: In an e-mail, I think</p> <p>9 he said.</p> <p>10 BY MR. ZAKARIN:</p> <p>11 Q That's useful to me. I appreciate it.</p> <p>12 MR. MARDEROSIAN: Can we take a -- if</p> <p>13 you're not wrapped up, we'll keep going.</p> <p>14 MR. ZAKARIN: Let me just finish this</p> <p>15 page, ask a couple of questions, and then take</p> <p>16 a break for five minutes.</p> <p>17 MR. MARDEROSIAN: That's fine.</p> <p>18 MR. ZAKARIN: I'm going to mark as an</p> <p>19 exhibit.</p> <p>20 THE WITNESS: Ten is coming.</p> <p>21 MR. BAGLEY: Ten is coming.</p> <p>22 THE WITNESS: The single page is 9.</p> <p>23 MR. MARDEROSIAN: This is RM-10?</p> <p>24 MR. ZAKARIN: Yes.</p> <p>25 (BMI Royalty Statement for fourth</p>

1 that production, was 31,296. That number has grown
2 since.

3 Q Okay. You listened to all 31,000-plus
4 of those audio files?

5 A As Don said, a lot of them are grouped
6 together; but yes, we have.

7 Q Okay. And of those detections, how
8 many, if you know, were for in-program uses?

9 A Without my notes in front of me, tough
10 to say off the top of my head. I'd say a fair
11 amount of them.

12 Q Do you know? Can you give me a range?

13 A No. I can't give you a range.

14 Q You haven't quantified it?

15 A No, there's an expert that's putting
16 that together for this.

17 Q Is that expert Bob Cohen?

18 A That's between you and my attorney.
19 You're welcome to ask him, Mr. Hwang. I will make
20 note, though, that the amount of usages detected in
21 these TuneSat are far less than in the cue sheets
22 that were turned in and far less than the cue sheets
23 that were turned in to Extreme.

24 MR. MARDEROSIAN: And the answer is
25 there are auditing consultants that I have

1 retained.

2 MR. HWANG: With that, I have no
3 further questions.

4 MR. MARDEROSIAN: I have no questions.

5 MR. ZAKARIN: I have no questions.

6 VIDEO OPERATOR: We are now going off
7 the record at 10:14 p.m. This concludes tape
8 9 and the deposition of Robert Marderosian.

1 CERTIFICATION

2
3
4 I, LISA FORLANO, a Certified Realtime
5 Reporter, Certified Court Reporter and Notary
6 Public, do hereby certify that I reported the
7 deposition in the above-captioned matter, that
8 the said witness was duly sworn by me; that
9 the foregoing is a true and correct transcript
10 of the stenographic notes of testimony taken
11 by me in the above-captioned matter.

12 I further certify that I am not an
13 attorney or counsel for any of the parties,
14 not a relative or employee of any attorney or
15 counsel connected with the action, nor
16 financially interested in the action.

17 LISA FORLANO, CRR, CCR #XI01143

18
19 Dated: August 2, 2018
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22
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24
25

1 JURAT

2 I, ROBERT MARDEROSIAN, the witness herein,
3 the foregoing testimony of the pages of this
4 deposition, do hereby certify it to be a true
5 and correct transcript, subject to the corrections,
6 if any, shown on the attached page.
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ROBERT MARDEROSIAN

Subscribed and Sworn to before me
this _____ day of 2018.

Notary Public

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I wish to make the following changes, for
the following reason:

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Page 539

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